

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

24th to 26th June 2013

STATUS HEARING

Case Name:

**[1] Asot Michael
[2] Josette Michael
[3] Teresa-Anne Michael
v
[1] The Attorney General
[2] The Commissioner of Police**

[ANUHCVP2009/0020]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. John Fuller

Respondent:

Mrs. Carla Brooks-Harris

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. Appellants shall file and serve skeleton arguments in support of the appeal no later than Friday, 12th July 2013.**
- 2. The respondents shall file and serve skeleton arguments in response no later than Friday, 16th August 2013.**
- 3. The appellants shall file and serve a reply if necessary no later than Friday, 30th August 2013.**
- 4. Thereafter, the appeal shall be set down on the hearing list.**

Reason:

Counsel indicated that they were ready to proceed in the matter.

Case Name:

**Austin Martin
v
The Attorney General of Antigua and
Barbuda**

[ANUHCVP2009/0015]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Dane Hamilton

Respondent:

Mr. Justin Simon, QC, Attorney General

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve the record of appeal no later than Monday, 16th September 2013.**
- 2. The appellant shall file and serve skeleton arguments together with authorities relied on no later than Monday, 30th September 2013.**
- 3. The respondent shall file and serve skeleton arguments with authorities relied in response no later than Wednesday, October 30th 2013.**
- 4. The appellant shall be at liberty to file and serve a reply no later than Friday, November 15th 2013.**

Case Name:

**Gene B. Samuel
v
Sheron Whinfield**

[ANUHCVP2009/0005]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. John Fuller

Respondent:

No appearance

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The Registrar shall prepare the transcript of the proceedings and give notice of its availability to the parties pursuant to CPR 62.9(1).**
- 2. Thereafter the parties shall comply with CPR 62.11, 62.12 & 62.13.**

Reason:

The transcript of proceedings was not yet ready.

Case Name:

**Reginald Water
v
Attorney General of Antigua and
Barbuda**

[ANUHCVP2010/0034]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Ms. E. Denecia Thomas holding papers for Mr. Ralph Francis

Respondent: Ms. Bridgette Nelson

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve the record of appeal no later than Friday, 26th July 2013.**
- 2. The appellant shall file and serve skeleton arguments and authorities relied on no later than Friday, 16th August 2013.**
- 3. The respondent shall file and serve skeleton arguments with authorities relied on in response no later than Tuesday, 10th September 2013.**
- 4. The appellant shall be at liberty to file skeleton arguments in reply no later than Wednesday, 25th September 2013.**

Case Name:

**The Proprietors, Condominium Plan No.
2/1989**

v

**Trinity Investments Company Limited
consolidated with
Trinity Investment Company Limited**

v

**The Proprietors Condominium Plan No.
2/1989**

[ANUHCVP2008/0009]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Ms. Kathleen Bennett with her Ms. Amaya Athill

Issue: Status of the matter

Result / Order:

[Oral delivery]

1. Appellants must file and serve a notice stating whether they intend to proceed with this appeal no later than Friday, 12th July 2012.
2. Failing the filing of such notice with the court's Registrar in accordance with paragraph 1, the notice of appeal herein shall be deemed to be struck out.

Reason:

Mr. Clement Bird, attorney at law, filed the appeal. However he no longer represents the appellants.

Nonetheless, Mr. Charlesworth Brown undertook to communicate with the appellants.

Case Name:

Paulette Matthew

V

**Antigua and Barbuda Port Authority
Board of Commissioners**

[ANUHCVP2008/0020]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Mr. Colin Derrick

Issue: Status of the matter

Result / Order: [Oral delivery]
The notes of the proceedings been deemed to be lost, the legal practitioners shall meet and discuss whether the notes if any taken by the practitioners of the parties during the proceedings in the court below can be compiled for the purpose of the record and report to the Court thereon by Tuesday, 30th July 2013.

Reason: The audio tapes for production of transcripts were not available.

Case Name: Janice Reynolds-Greene
v
The Bank of Nova Scotia
[ANUHC VAP2008/0030]
[ANUHC VAP2008/0031]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:
Appellant: In person
Respondent: Mrs. Fidela Corbin-Lincoln

Issue: Status of the matter

Result / Order: No order was made.

Reason: The tapes of the proceedings could not be located.

Case Name: Marie Makhoul
v
Cicely Foster

[ANUHCVP2009/0014]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:
Appellant: Mr. Hugh Marshall with him Ms. Kema Benjamin
Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar shall cause the transcripts of the proceedings to be prepared and then to give notice of the availability to the parties pursuant to CPR 62.9(1).
2. Thereafter the appeal shall proceed in accordance with rules of court.

Reason: The tapes were located however the transcript of proceedings was still yet to be prepared.

Case Name: [1] Eric Bowman
v

**[1] The Attorney General
[2] Chief Magistrate
[3] Chief Immigration Officer**

[ANUHC VAP2009/0025]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mr. Justin Simon, QC, Attorney General with him Mrs. Carla Brooks-Harris

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The appellant is to file a notice stating whether he intends to proceed with the appeal no later than Friday, 26th July 2013.
2. In the event that no notice is filed in accordance with no. 1 of this Order, the notice of appeal filed herein on 30th September 2009 shall be deemed to be struck out.

Reason: There was no appearance of the appellant.

Case Name: Joshua Fabian
v
The Bank of Nova Scotia

[ANUHC VAP2009/0030]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mrs. Fidela Corbin-Lincoln

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The appellant shall file and serve the record of appeal no later than Friday, 19th July 2013. Failing which the appeal herein shall be deemed dismissed.
2. In the event that the record of appeal is filed and served in accordance with paragraph 1 of this order the appellant shall file and serve skeleton arguments no later than Tuesday, 13th August 2013.
3. The respondent shall file and serve skeleton arguments in response within 28 days of service of the appellant's skeleton arguments
4. The appellant shall then be at liberty to file and serve skeleton arguments in reply within 14 days of service of the respondent's skeleton arguments.

Reason: The record of appeal was not yet filed.

Case Name: Belgrove Gregory
v
Ada Browne

[ANUHCVP2010/0023]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	Mrs. Stacy-Ann Saunders holding papers for Dexter Wason
Respondent:	Ms. E. Denecia Thomas holding papers for Mr. Ralph Francis

Issue: Status of the matter

Result / Order: [Oral delivery]

1. Upon completion of preparation of transcripts the Registrar shall give notice to the parties of its availability.
2. The appeal shall thereafter proceed in accordance with CPR 2000.

Reason: The tapes were located however the transcript of proceedings was still yet to be prepared.

Case Name:

Claxton Ralph
v
Eugene Teague

[ANUHCVP2010/0038]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	Mr. Charlesworth Brown
Respondent:	Ms. Kathleen Bennett with her Ms. Amaya Athill

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. The Registrar shall give notice to the parties of the availability of the transcripts.**
- 2. Thereafter the appeal shall proceed in accordance with CPR 2000.**

Reason:

The transcripts were available however the parties were not made aware of its availability.

Case Name:

**Richard Lam
v
Roxanne Frederick**

[ANUHCVP2010/0039]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Hugh Marshall with him Ms. Kema Benjamin

Respondent:

No appearance

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The Registrar to send notice of availability of transcript to the parties.**
- 2. Thereafter the appeal to proceed in accordance with CPR 2000.**

Reason:

Notice of availability of transcript was sent on 3rd June 2013 to the appellant. The respondent did not receive a copy of this notice.

Case Name: [1] Egen Joseph
[2] Francine Joseph
V
[1] Sylvia Roberts (As Power of Attorney
for Joseph Roberts)
[ANUHCVP2010/0048]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:
Appellant: No appearance
Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issue: Status of the matter

Result / Order: No order was made.

Reason: The order of Baptiste JA dated 18th January 2011 rendered the appeal a nullity.

Case Name: Clive Oliveira
V
The Attorney General
[ANUHCVP2010/0047]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Dr. David Dorsett
Respondent: Mr. Justin Simon, QC, Attorney General

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The appellant shall file and serve skeleton arguments with authorities relied on no later than Friday, 12th July 2013.
2. The respondent shall file and serve skeleton arguments with authorities relied on no later than Friday, 30th August 2013.
3. The appellant is at liberty to file and serve a reply skeleton argument no later than Monday, 16th September 2013.

Case Name: Antigua Real Estates Limited
v
Rupert Kenlock
[ANUHCVP2010/0046]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Ms. Andrea Roberts-Nicholas
Respondent: Ms. Kathleen Bennett with her Ms. Amaya Athill

Issue: Status of the matter

Result / Order: [Oral delivery]
Matter to proceed in accordance with the CPR 2000.

Reason: Notice of availability of transcript was only served on the appellant on 3rd June 2013.

Case Name: Jennings Building Products Limited
v
C.O. Williams Construction (Antigua)
Limited

[ANUHCVP2010/0045]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Ms. E. Denecia Thomas

Respondent: Ms. Gail Christian with her Ms. Joy Dublin

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar shall cause to be prepared and give notice to the parties of the availability of the transcripts of the proceedings.
2. Thereafter the appeal shall proceed in accordance with CPR 2000.

Reason: The notes of evidence were unavailable.

Case Name: Colin Turner
v
Terrance Sansom

[ANUHC VAP2011/0021]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mrs. Stacy-Ann Saunders Osbourne

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The Registrar shall cause to be prepared the transcript of the proceedings and shall give notice of its availability to the parties.
2. Thereafter the appeal shall proceed in accordance with CPR 2000.

Reason: The transcript was not yet available.

Case Name:

Hilroy Humphreys
v
Ian Peters

[ANUHC VAP2011/0031]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	Mr. Septimus Rhudd
Respondent:	No appearance

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
1. The Registrar shall cause to be prepared the transcripts of the proceedings and to give notice to the parties of its availability pursuant to CPR 62.9(1).
2. Thereafter the appeal shall proceed in accordance with CPR 2000.

Reason: **The transcripts were not yet available.**

Case Name: **Xavier Mason**
v
The Antigua Port Authority
[ANUHCVP2011/0027]

Date: **Wednesday, 26th June 2013**

Before: **The Hon. Dame Janice M. Pereira, Chief Justice**

Appearances:
Appellant: **Ms. Kathleen Bennett**

Respondent: **Mr. Colin Derrick**

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
1. The Registrar shall cause to be prepared transcript of the proceedings and to give notice to the parties of the availability pursuant to CPR.
2. Thereafter the appeal shall proceed in accordance with the rules of court.

Reason: The transcript was not yet available.

Case Name: Hazel de Freitas
v
Attley de Freitas
[ANUHCVP2011/0017]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:
Appellant: Mrs. Stacy-Ann Saunders-Osbourne
Respondent: Mrs. Andrea Roberts-Nicholas

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar shall cause to be prepared transcript of the proceedings and to give notice to the parties of its availability pursuant to CPR 2000.
2. Thereafter the appeal shall proceed in accordance with the rules of court.

Reason: The transcripts were not yet available.

Case Name: George W. Bennett Brysons & Co. Ltd.
v
George Purcell

[ANUHC VAP2011/0023]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Mrs. Fidela-Corbin Lincoln

Respondent: Mr. Kelvin John with him Mr. Loy West

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The Registrar shall cause to be prepared transcript of the proceedings and to give notice to the parties of the availability pursuant to CPR 62.9(1).
2. Thereafter the appeal shall proceed in accordance with the CPR 2000.

Reason: Tapes were available however the transcripts were not yet available.

Case Name:

New Systems Ltd.
v
Vincente Geraldo

[ANUHC VAP2011/0014]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the matter

Result / Order:

[Oral delivery]

1. The Registrar shall send to the practitioners of the appellant a letter of request that they file with the Court no later than 31st July 2013 a notice of their intention to proceed with this appeal.
2. In the event no notice of intention to proceed is filed with the Court in compliance with paragraph 1 of this order the notice of appeal shall be deemed to be struck out.
3. The Registrar shall serve a copy of this order on the parties.

Reason: There was no appearance by either party to the matter.

Case Name: Montpellier Farm Limited
V
Antigua Commercial Bank
[ANUHCVP2011/0007]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Mr. Clement Bird

Respondent: Mrs. Andrea Roberts-Nicholas

Issue: Status of the matter

Result / Order:

[Oral delivery]

1. The Registrar shall cause to be prepared transcript of the proceedings and to give notice to the parties of the availability pursuant to CPR 62.9(1).
2. Thereafter the appeal shall proceed in accordance with the rules of court.

Reason:

The notes of evidence were not yet available.

Case Name:

[1] Everal Green
v
[1] The Attorney General
[2] Delisle Narino Mirtha Dra

[ANUHCVP2011/0004]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Steadroy Benjamin

Respondent:

Mr. Justin Simon, QC, Attorney General with him Mrs. Carla Brooks-Harris

Issue:

Status of the matter

Result / Order:

[Oral delivery]

1. The Registrar shall cause to be prepared transcript of the proceedings and to give notice to the parties of the availability pursuant to CPR 62.9(1).
2. Thereafter the appeal shall proceed in accordance with the rules of court.

Reason: The transcripts were not yet available.

Case Name: Brown's Bay Resort Ltd.
v
Luca Pozzoni
[ANUHCVAP2010/0033]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:
Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett
Respondent: Mr. Lenworth Johnson

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar shall cause to be prepared a transcript of the proceedings and to give notice to the parties of it availability
2. Thereafter the appeal shall proceed in accordance with CPR 2000.

Reason: The notes of evidence were not yet available.

Case Name: [1] Jose Luis Colon and Juan Cortes (On behalf of themselves and person who contracted with Accord Investment Company Ltd.)
v
[1] Accord Investment Company Limited

**t/a Accord Insurances and/or EMRN
Investments Company Ltd.**

[2] Eurofed Ltd. (In Liquidation)

[3] Charles Walwyne

[4] Alec Vanderpoole

[ANUHCVAP2008/0010]

Date: Wednesday, 26th June 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: Ms. Kema Benjamin with her Mr. Hugh Marshall

Respondent: Mr. Nicholas Fuller

Mr. Justin Simon, QC, Attorney General with
him Ms. Annette Mark for the Supervisory
Authority

Issue: Status of the matter

**Result / Order /
Reason:** [Oral delivery]
The application for extension for time to comply
was refused on 22nd January 2012 by a single
judge.

Case Name: Clayton Davis
v
The Queen

[ANUHCRA2009/0004]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. Hearing of the appeal is to be set for the next sitting of the Court of Appeal in November 2013.**
- 2. The appellant is to file and serve skeleton arguments on or before 31st August 2013.**
- 3. The respondent is to file and serve skeleton arguments in response on or before 15th October 2013.**

Reason: The appellant has received the record of appeal; therefore the appeal can proceed.

Case Name:

Alwyn James

v

The Queen

[ANUHCRA2009/0005]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Ms. E. Denecia Thomas holding papers Mr. Ralph Francis

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: **Status of the matter**

Result / Order: [Oral delivery]
1. The Registrar of the High Court is to ensure the preparation of the transcript in this matter.
2. The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013 for further status report.

Reason: The transcripts were not yet prepared.

Case Name: **Rashid A. Pigott**
v
The Queen
[ANUHCRA2009/0009]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: **Status of the matter**

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013.

Reason: There was no appearance of the appellant.

Case Name: Timothy Kitt
v
The Queen

[ANUHCRA2010/0003]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013.

Reason: There was no appearance of the appellant.

Case Name: Ashworth Bunch
v
The Queen

[ANUHCRAP2011/0001]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Jason Martin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 24th November 2013.

Reason: The transcripts were not yet available.

Case Name: Michael Crooks
v
The Queen

[ANUHCRAP2011/0002]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton arguments on or before 15th September 2013.**
- 2. The respondent is to file and serve skeleton arguments in response on or before 29th October 2013.**
- 3. The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 24th November 2013.**

Case Name:

Hilroy Humphreys

v

The Queen

[ANUHCRA2011/0004]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue:

Status of the matter

Result / Order:

[Oral delivery]

Matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda in November 2013.

Reason: The transcripts in the matter were ready, therefore the matter can proceed.

Case Name: Noble Mayne
v
The Queen
[ANUHCRA2011/0005]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013 for further status report.

Reason: There was no appearance of the appellant.

Case Name: Elmeade Jarvis
v

The Queen

[ANUHCRAP2011/0003]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen holding papers for Ms. Constance Mitcham

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order: [Oral delivery]
The appeal is to be heard at the next sitting of the Court of Appeal in Antigua and Barbuda in November 2013.

Reason: The transcripts were ready; as such the parties indicated that they would be ready to proceed with the appeal at the next sitting of the Court.

Case Name: Jennifer Joseph
v
The Queen

[ANUHCRAP2011/0006]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. John Fuller

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013 for further status report

Reason: Counsel for the appellant requested time to take further instructions from his client.

Case Name: Rudy Monelle
v
The Queen

[ANUHCRA2008/0017]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Lawrence Daniel holding papers for Mr. Cuthbert Cumberbatch

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton arguments on or before the 27th August 2013.**
- 2. The respondent is to file and serve skeleton arguments in reply on or before 15th October 2013.**
- 3. The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013.**

Reason:

Counsel for the appellant indicated to the Court that he recently received the record of appeal.

Case Name:

**Yanela Ramirez Diaz
V
The Commissioner of Police
[ANUMCRAP2010/0003]**

Date:

Wednesday, 26th June 2013

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:

Mr. Steadroy Benjamin

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Status of the matter – Application for leave to withdraw appeal

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellant to withdraw appeal.**
- 2. Notice of discontinuance is to be filed on or**

before 25th July 2013.

Reason: The appellant has served his sentence.

Case Name: Sally Morejan Gomz
V
The Commissioner of Police
[ANUMCRAP2010/0004]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: Mr. Steadroy Benjamin
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Status of the matter – Application for leave to withdraw appeal

Result / Order / Reason: [Oral delivery]
1. Leave is granted to the appellant to withdraw appeal.
2. Notice of discontinuance is to be filed on or before 25th July 2013.

Case Name: Layota Sutherlands
V
The Commissioner of Police

[ANUMCRAP2011/0003]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013 for further status report.

Reason: The transcripts were not yet available.

Case Name: Pauline V. Edwards
v
The Commissioner of Police

[ANUMCRAP2011/0004]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public

Prosecutions

Issues:

Status of the matter – Application for leave to withdraw appeal

**Result / Order /
Reason:**

[Oral delivery]

- 1. Leave is granted to the appellant to withdraw appeal.**
- 2. Notice of discontinuance is to be filed on or before 25th July 2013.**

Case Name:

**Pauline V. Edwards
V
The Commissioner of Police**

[ANUMCRAP2011/0005]

Date:

Wednesday, 26th June 2013

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:

Mr. Steadroy Benjamin

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Status of the matter – Application for leave to withdraw appeal

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellant to withdraw appeal.**
- 2. Notice of discontinuance is to be filed on or before 25th July 2013.**

Reason: The appellant has served the sentence.

Case Name: [1] Vere Bird Jr.
[2] Lester Bryant Bird
[3] Gaston Browne
[4] Mary Claire Hust
[5] Molywn Joseph
[6] Sharon Kentish
[7] Jim Galloway
v
[1] The Commissioner of Police
[ANUMCRAP2010/0015]

Date: Wednesday, 26th June 2013

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: Mr. Steadroy Benjamin
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 25th November 2013 for further status report

APPLICATIONS AND APPEALS

Case Name: Janice Reynolds-Greene
v
The Bank of Nova Scotia
[ANUHCVP2010/0037]

Date: Monday, 24th June 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:
Applicant: In person
Respondent: Ms. Fidela Corbin-Lincoln

Issue: Application to adduce fresh evidence

Result / Order: [Oral delivery]
The application to adduce the documents, JRG 1 & JRG2, and the affidavit of the applicant sworn on 6th February 2013 is hereby granted.

Reason: The applicant satisfied the requirements for the admittance of fresh evidence in the Court of Appeal.

Case Name: Janice Reynolds-Greene
v
Community First Cooperative Credit
Union Limited
[ANUHCVP2013/0006]

Date: Monday, 24th June 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Mrs. Stacey-Ann Saunders-Osborne with her
Mr. Kwame Simon

Issue: Application to strike out appeal

Result / Order: [Oral delivery]
On the discontinuance of the appeal final hearing on 10th June 2013, the appellant shall bear the respondent's costs assessed in the sum of \$2,000.00 to be paid as 50% on or before 7th July 2013 and the remaining 50% on or before 7th August 2013.

Reason: The appellant filed to discontinue the appeal; therefore the respondent is entitled to costs.

Case Name: Myrna Norde
v
Jacqueline Mannix
[ANUHC VAP2012/0038]

Date: Monday, 24th June 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Applicant / Intended Appellant: Mr. Ralph A. Francis

Respondent: Mr. Hugh Marshall with him Ms. Kema Benjamin

Issues:

Application for leave to appeal – Application to strike out appeal

Result / Order / Reason:

[Oral delivery]

1. The application by the intended respondent to strike out appeal withdrawn with leave of the Court.
2. The application for leave to appeal filed on 5th December 2012 is adjourned pending receipt of written reasons of the learned master in respect of his decision made on 21st November 2012.
3. Upon receipt of said reasons the application for leave shall be placed on the chambers list for hearing and determination.

Case Name:

[1] The Prime Minister
[2] Juno Samuel
v
[1] Sir Gerald Watt, KCN, QC

[ANUHCVP2012/0005]

Date:

Monday, 24th June 2013

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Sanjeev Datadin

Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issue: Application for leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]

1. The application of the appellant for conditional leave to appeal to Her Majesty in Council is hereby granted upon the following conditions:
 - i. The appellants/applicants, within 90 days of the date hereof, enter into good and sufficient security to the satisfaction of the Court, of a sum not exceeding 500£ sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the appellants/applicants in the event of their not obtaining an order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or a Judicial committee ordering the appellants/applicants to pay the cost of the appeal as the case may be pursuant to Section 4(a) of Antigua and Barbuda Appeal to Privy Council Order.
 - ii. Within 90 days of the date hereof the applicants to take necessary steps for the purpose of preparing the record, the settling of such record with the solicitors for the respondent and the certificate of such record by the Registrar of the Court of Appeal.
 - iii. The record shall be prepared in accordance with Rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5; and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.

2. The applicants/appellants shall make an application to the Court for final permission to appeal to her Majesty in Council supported by the certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Registrar.
3. The application for a stay is refused.
4. The costs of the application for conditional leave to appeal shall be costs in the appeal to Her Majesty in Council.

Reason: The application for leave to appeal was in order and was not opposed.

Case Name: [1] Sir Gerald Watt, KCN, QC
V
[1] The Prime Minister
[2] Juno Samuel
[ANUHCVP2012/0042]

Date: Monday, 24th June 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:
Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett
Respondent: Mr. Sanjeev Datadin

Issues: Application for leave to appeal to Her Majesty in Council – Application for a stay of the assessment of damages and costs

Result / Order:

[Oral delivery]

- 1. Correction to paragraph 31 of the judgment, re. CPR 65.13.**
- 2. Costs to be assessed.**
- 3. The conditional leave to appeal to Her Majesty in Council in respect of the judgment of the Court of Appeal made on 27th May 2013 is hereby granted on the same conditions as Appeal No. 5 of 2013.**
- 4. The application for a stay is refused.**

Reason:

The application for leave to appeal was in order and was not opposed.

The application for a stay of the assessment of damages and costs was opposed. The Court was of the view that (a) the declarations made by the Court were not amenable to a grant of a stay; and (b) the applicant, in his application and affidavit in support, did not set out any basis for a grant of a stay of the costs order and the order in relation to the damages to be assessed. Without that evidential basis the Court was not in a position to exercise its discretion in favour of the applicant in granting a stay.

Case Name:

Jamal Jonas

v

The Queen

[ANUHCRA2008/0015]

Date:

Monday, 24th June 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. John Fuller

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against sentence – Manslaughter

Result / Order: [Oral delivery]
The appeal is allowed and the sentence is reduced to ten (10) years and the time of 1 year 9 months spent on remand to be taken into account in sentence.

Reason: The learned trial judge correctly identified all of the various factors that ought to have been taken into consideration in sentencing and arrived at a correct benchmark of 15 years. However, in the application of these principles she erred and ended up with a sentence that was unduly excessive.

The appellant had earned the 1/3 discount. In *Desmond Baptiste v The Queen* (Saint Vincent and the Grenadines SVGHCRA2003/0008, delivered 6th December 2004, unreported) it was held that a person pleading guilty at an early time is entitled to 1/3 discount unless there are circumstances that would disentitle them to the discount. Applying this case, the earlier the defendant pleads guilty the greater the likelihood the defendant will receive full discount.

In this case the appellant pleaded guilty at the earliest time possible. In addition the appellant spent time on remand. The time the appellant spent on remand ought to be taken into consideration. In *Desmond*, Byron CJ held that the sentencer should give the accused consideration for time spent on remand.

There were several mitigating factors being the appellant's and clean record to take into account versus the aggravating factor of the use of the firearm. Upon close examination, the correct sentence is 10 years.

The Court indicated its preference for a sentence which took into account the 1 year and 9 months spent on remand.

Case Name:

Stephen Greaves

V

The Queen

[ANUHCRA2007/0003]

Date:

Tuesday, 25th June 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. John Fuller

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him Ms. Shannon Jones**

Issues:

**Criminal appeal against conviction and
sentence of 10 years imprisonment –
Manslaughter**

Result / Order:

[Oral delivery]

- 1. The appeal as to conviction is abandoned and hereby dismissed.**
- 2. The appeal against sentence is dismissed and the sentence is hereby affirmed and clarified as follows:**
 - i. In reckoning of the 10 year sentence**

the appellant will be credited with the 1 year, 2 months and 12 days spent on remand between his arrest and his sentencing, that is, between 15th September 2006 to 27th November 2007.

Reason:

In the circumstances of this case the sentence imposed was not unduly severe. The Court found that no criticism could be made of the trial judge judging from the principles that were applied.

Case Name:

Shavawn Roberts

v

The Queen

[ANUHCRA2008/0004]

Junior Roberts

v

The Queen

[ANUHCRA2008/0005]

Barbara Peters

v

The Queen

[ANUHCRA2008/0006]

Date:

Monday, 24th June 2013

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Application for adjournment – Murder

Result / Order:

[Oral delivery]

1. It is ordered that the appellants file a notice of discontinuance in respect of the appeal against conviction in Criminal Appeals No. 4, 5 & 6 of 2008, that is, Shavawn Roberts, Junior Roberts and Barbara Peters v The Queen.
2. The appellants are to file and serve skeleton submissions and authorities in respect of the said grounds of appeal against sentence on or before 15th July 2013.
3. The respondent is to file and serve skeleton arguments in reply on or before 29th July 2013.
4. The hearing of the appeal against sentence is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during November 2013.

Reason:

Counsel indicated that the appellants no longer wish to appeal against their convictions.

Counsel further requested an adjournment in the matter. The respondent had no objection.

Case Name:

Janice Reynolds-Greene

v

The Bank of Nova Scotia

[ANUHCVP2010/0037]

Date: Monday, 24th June 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Fidela Corbin-Lincoln

Issues: Civil appeal – Contract – Constructive and unfair dismissal

Result / Order: [Oral delivery]
The appeal is dismissed with no order as to costs.

Reason: Having reviewed the entire judgment and reasoning of the Industrial Court delivered on 1st July 2010 coupled with the evidence that was before the Industrial Court, the Court concluded that it was clear that the reason given in the letter of termination dated 3rd March 2003 by the respondent Bank, referring to the new structure of the Bank, and having told the appellant that if she did not accept any of the posts being offered her employment would be terminated, there was no doubt that there was a factual basis for that finding. The respondent Bank was putting into place a new structure and the old post ceased to exist. The factual circumstances of the case were made out and it was open for the Industrial Court to have found that this would have amounted to a substantial reason for the termination of the employment of the appellant.

The Court further held that there was no basis in its appellant jurisdiction to interfere with the

finding made by the Industrial Court and accordingly the ground of the appeal challenging the fairness and the conclusion of the Industrial Court which found that the dismissal was fair is dismissed.

In relation to ground 2 of the appellant's complaint, the Court concluded that the pension to which the appellant was entitled was conditional on payment not made to the respondent Bank in respect of a loan by the Bank. The Court noted that it was clear that the Industrial Court imposed no condition as to the use of, the disposal of or entitlement to the pension to which the appellant was entitled but merely made a comment which was obiter and could not be seen as an imposition in respect of the to use of or disposal of the appellant's pension. Accordingly, that ground of appeal was also dismissed.

On the ground of appeal which challenged that the Industrial Court ought to have found that the appellant was entitled to vacation pay, life insurance, return notice pay, increase of interest loss on the loan and payments of those kinds, the Court held that those are claims not arising in claims for unfair dismissal but would be claims arising under the appellant's contract of employment and as such the Industrial Court dealing with the question of unfair dismissal did not address those issues and was correct in so doing; furthermore, the Court dealing with an appeal from the Industrial Court in relation to unfair dismissal was in no better position to deal with matters that arose from a contract of employment. The Court advised that those matters would have to have been fully canvassed before a court as they do not fall under the aspect of unfair dismissal. Accordingly, that ground of appeal also failed.

On the issue of costs, the Court held that costs in the Industrial Court are only awarded in exceptional cases. This case did not fall within that category.

Case Name:

**Bobb Persaud
v
Warren Headley-Hall**

[ANUHCVP2011/0006]

Date:

Tuesday, 25th June 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Hugh Marshall

Respondent:

**Mr. Kelvin John with him Mr. Loy Weste and
Mrs. Lisa John-Weste**

Issues:

**Civil appeal – Non-Citizens Land Holding
Regulation Act**

Result / Order:

[Oral delivery]

**The appeal is dismissed with costs to the
respondent fixed at 2/3 of the costs awarded in
the court below pursuant to CPR 65.13.**

Reason:

**The Court emphasized that the instant case fell
squarely within the principals enunciated by the
Court in Murphy v Quigg and Another (1996) 54
WIR 162 and was clearly one where on the
undisputed facts the respondent provided the
purchase money for property placed in the
name of the respondent. Those facts created a
resulting trust in favor of the respondent. As
such, the respondent was not required to rely
on illegality, as his claim then would have been
enforceable as it was based on an equitable title**

on facts which generated such a title.

Case Name: **State Insurance Corporation**
v
Robert Josiah
[ANUHCVP2011/0039]

Date: **Tuesday, 25th June 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Roger Forde, QC with him Mrs. Cherissa Roberts-Thomas**

Respondent: **Sir Claire Roberts, QC with him Mrs. Andrea Roberts-Nicholas**

Issues: **Civil appeal – Contract – Transfer of contract of employment – Analysis and construction of Section 10.1 of the State Insurance Corporation, Cap. 413 – Regulations 4&5 of the Pensions Act, Cap. 311 – Pension rights**

Result / Order: **[Oral delivery]**
1. The appeal is allowed.
2. Costs to the appellant being 1/2 of the usual two thirds of the \$16,000 awarded in the court below.

Reason: **The Court was of the view that the learned trial judge failed to properly analyse the evidence and failed to provide adequate reasons for his**

conclusion. The learned trial judge ought to have analysed section 10(1) of the State Insurance Corporation Act, Cap. 413 and make a determination as to what it meant. Further, the learned trial judge should have analysed the relevant provisions of the Pension Act, Cap. 311.

Case Name:	Charles Joseph v Antigua Commercial Bank [ANUHCVP2012/0011]
Date:	Monday, 24th June 2013
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mrs. Tracy Benn-Roberts
Issues:	Civil appeal – Fraud – Whether the appellant suffered loss
Result / Order:	[Oral delivery] 1. The appeal is dismissed. 2. Costs to the respondent in the sum of \$18,675.00.
Reason:	The Court was of the view that there was no merit in any of the grounds of appeal. The trial judge was correct to have found that there was

no basis for bringing the claim as the whole nature of the pleadings did not constitute a cause of action of any kind against the respondent bank. The appellant did not plead any fraud against the respondent bank. As such, the trial judge had no alternative but to strike out the case.

Case Name: **Jumby Bay Resort**
v
Kiston Browne
[ANUHCVP2012/0019]

Date: **Tuesday, 25th June 2013**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mrs. Nelleen Rogers-Murdoch with her Mrs. Fidela Corbin-Lincoln
Respondent:	Mr. Vere Bird, III

Issues: **Civil appeal – Section C56 & C59 of Labour Code – Bias in the Industrial Court**

Result / Order: **[Oral delivery]**

- 1. It is hereby directed that the Industrial Court furnishes for the use of the Court no later than Tuesday, 30th July 2013 a transcript of the proceedings before it, in reference to No. 9 of 2011 entitled Kiston Brown v Jumby Bay Resort.**
- 2. The said transcript of proceedings shall be furnished to the Registrar of the High Court in Antigua and Barbuda.**

3. The Registrar upon receipt of the said transcript shall give notice in writing of its availability to the legal practitioners for the parties.
4. A copy of this order shall be served by the Registrar on the Registrar of the Industrial Court no later than Monday, 1st July 2013.
5. The matter is adjourned to the next sitting of the Court of Appeal in this jurisdiction.

Case Name: [1] British American Insurance Co. Ltd
V
[1] Marlon Ho-Tack
[2] Alice Ho-Tack
[ANUHCVP2012/0027]

Date: Tuesday, 25th June 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:
Appellant: Dr. David Dorsett
Respondent: Ms. Kema Benjamin

Issues: Civil appeal – Set aside of default judgment

Result / Order: [Oral delivery]
The appeal is allowed with no order as to costs.

Reason: The Court held that the learned judge erred when he held that, as a matter of law, there were

no exceptional circumstances which would empower the court to set aside the default judgment as provided by CPR 13.3.2. CPR 13.3.2 provides in any event the court may set aside a default judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.

In this case, the affidavit of Jennifer Lloyd, on behalf of the appellant, affirmed on 25th September 2012 and filed the same date clearly and unambiguously spoke to the element of exceptional circumstances. The appellant was in financial ruin; consequently, the regulators moved expeditiously to have the appellant brought under judicial management. The appellant was heavily indebted to a vast number of policy holders, not just the Ho Tacks. In paragraph 7 of her affidavit, Jennifer Lloyd further deposed that the appellant had to be brought under judicial management because of those exceptional circumstances and that efforts were ongoing to bring the affairs of the company to an orderly state. Mr. Cleveland Seaforth, the judicial manager of the company, also deposed to the aspect of exceptional circumstances.

The exceptional circumstances have not abated; this would render continued judicial management of the appellant necessary. Owing to this, the Court was of the view that complying with the default judgment would be tantamount to deepening an already grievous financial catastrophe. The Court then determined that adequate and potent evidence of exceptional circumstances were deposed to. Since that was the case, the learned trial judge clearly erred in not paying proper regard to the evidence.